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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,116

09/22/2003

Kraig A. Kirschner

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04/07/2006

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EXAMINER

LE, TAN

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/668,116	KIRSCHNER, KRAIG A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tan Le	3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This is the second office action for serial number 10/668,116. This application contains 15 claims numbered 1-15.

### **Claim Rejections - 35 USC § 112**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7, 15 are repeatedly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 4 are rejected because there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. Applicant is required to clarify what the claim is intended to be drawn to i.e, either the riser clamp alone or the combination of the riser clamp and the pipe, and the language of the claim be consistent with the intent. In formulating a rejection on the merits, the examiner is considering that the claim is drawn to the combination.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 4, 6, 8, 10, 11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,765,106 to Modrovich.

As to claims 1, 4, 8, 11 and 15, Modrovich shows a conscreed bracket as depicted in Fig. 2, which comprises two bars, each bar including a substantially hemicylindrical section, a first straight section on one end of the hemicylindrical section and a second straight section on the other end of the hemicylindrical section, each straight section having a through hole closely spaced equidistant from the hemicylindrical section; fasteners (22, 20, 24) extendable through the through holes to retain the two bars together with the first straight sections juxtaposed with the second straight sections, respectively; and at least one of the first straight section and the second straight section on each of the two bars having a length greater than the radius of the hemicylindrical section .

Modrovich is silent about whether the inside diameter of the hemicylindrical sections of the two bars is smaller than the specified outside diameter by not to exceed five percent with the first straight section juxtaposed with the second straight sections, respectively.

It would have been an obvious to one having an ordinary skill in the art at the time the invention was made to inherently provide the two hemicylindrical sections of the two bars having a diameter being smaller the diameter of the pipe by some percents in order to allow a small gap or space for the two bars to be gripped the pipe with an pressure holding enough without braking the pipe when the bolt is tightened until the straight bars are juxtaposed or mated to each other.

It would also have been an obvious matter of design choice to have provided the two hemicylindrical sections of the two bars having a diameter being smaller than the diameter of the pipe by not to exceed than five percents as claimed since Applicant has not disclosed of either the critical nature of as to why and why not exceed than five percent or any unexpected results arising therefrom, and that as such the diameter was arbitrary and therefore obvious to one skilled in the art. The critical nature could have also depended upon both the material and size to be made for both the pipe and hemicylindrical sections. These are considered be unlimited, therefore it would have been considered an obvious matter of design choice.

Modrovich shows the two straight sections are substantially equal but does not show a long straight section on one end of the hemicylindrical section and a short straight section on the other end of the hemicylindrical section.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided at least one straight section of each hemicylindrical longer than the other to allow the whole length of the clamp to be longer to attach to other object such as on the floor or rest upon the surface if so desired.

As to claims 3, 6 and 10, Modrovich also shows fasteners each being provided with a bolt with a nut threadable thereon.

As to claims 13-14, the use of CPVC pipe is well known and to use such in the same intended purpose would have been obvious and well within the level of ordinary skill in the art at the time the invention was made thereby providing structure as claimed.

Claims 2, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modrovich in view of US Patent No. 4,733,471 to Rahe.

Unlike Modrovich, Rahe teaches the inside edge of the hemicylindrical sections being radiused. It would have been obvious to provide a radiused inside edges as taught in Rahe for the purpose of providing the pipe to freely slide into the hemicylindrical sections as well as preventing gouging.

Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modrovich in view of US Patent No. 3,682,422 to Evans.

Unlike Modrovich, Evans teaches each the long straight sections each having an attachment hole closely spaced from the distal end thereof.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided an additional hole or an attachment hole on each the long straight section as taught by Evans into the modified long straight section of Modrovich in order to attach to other object such as on the floor or rest upon the surface if so desired.

### ***Response to Arguments***

4. Applicant's arguments filed 09/19/0/05 have been fully considered but they are not persuasive.

Applicant basically argued that there is no teaching or suggestion of the specific range of diametrical relationship afforded by the present claims... Modrovich does not

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provide motivation for the claimed diametrical range as claimed. The first criteria for a Prima Facie case of obviousness is not support by Modrovich. This argument is not found persuasive. The examiner respectfully submits that the range as claimed in claims are deemed to be obvious over Modrovich for the reasons as pointed out in the rejection. In addition, to have selected the range as being claimed is deemed obvious over Modrovich because it was obvious to one of ordinary skill in the art at the time the invention was made to select the range of the inside diameter smaller than the specified outside diameter by not to exceed five percent with the first straight sections since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Nevertheless, the range as selected may be selected from any range that's suitable for the intended purpose, which has no limited in Modrovich's teaching. The range of diametrical relationship associated with the specified outside diameter of the pipe is also considered to be a matter of design choice and dependent upon the intended application and the configuration of the object to which the holder will be attached.

With respect to the argument that there must be showing of a suggestion or motivation to modify the teachings of that reference. This is also not found persuasive because *there is no requirement that a motivation to make the modification be expressly articulated*. It's also not necessary that a reference actually suggests changes, motivation or possible improvements, which Applicant made. In re Sheckler, 438 F.2d 999, 1001, 168 USPQ 716, 717 (CCPA 1971). And conclusion of obviousness can be



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“from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference”. In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

With respect to the argument of 112 2<sup>nd</sup> rejection, Applicant appears to indicate that claims 1 and 4 do not include the riser (page 10, 2nd para) (indicates subcombination only). However, the language in the body of claims still remain inconsistently with the preamble (the language in the body of claims indicates combination with outside diameter). For that reason, the claims are still rejected because there is still inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear.

Please also note that if Applicant indicates the subcombination is being claimed while the outside diameter is unknown/unclaimed or undefined element, it is improper to define an element of the claims based on a relationship to an unclaimed element.

### ***Conclusion***

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le  
March 28, 2006

  
ANITA KING  
PRIMARY EXAMINER